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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/521,339	08/12/2005	Kenneth Guild	P63634	9153
156 7590 11/25/2009 Kirschstein, Israel, Schiffmiller & Picroni, P.C. 425 FIFTH AVENUE 5TH FLOOR NEW YORK, NY 10016-2223				
EXAMINER				
BELLO, AGUSTIN				
ART UNIT		PAPER NUMBER		
2613				
NOTIFICATION DATE		DELIVERY MODE		
11/25/2009		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

AI@KIRSCHSTEINLAW.COM  
ptoofficeactions@yahoo.com

# Office Action Summary

**Application No.**

10/521,339

**Applicant(s)**

GUILD, KENNETH

**Examiner**

Agustin Bello

**Art Unit**

2613

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 July 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 25-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 25-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SI/02)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(c), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(c) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 7/16/09 has been entered.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 25-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Li (Patent No. US 6,579,018 B1).

Regarding claim 25, Li teaches a method of transmitting information from a start node (i.e. "Node A" in Figure 1) through a plurality of nodes (i.e. "Node D" "Node C" in Figure 1) to a target node (i.e. "Node B" in Figure 1) in a wavelength division multiplex optical communications network, each node including a wavelength selective optical cross-connect (reference numeral 20 in Figure 2), the method comprising the steps of: configuring the cross-connect at each of the start node and the target node with a plurality of switching matrices (reference numeral 21, 22 in Figure 2) for switching wavelength channels, the cross-connect at each of the start node and the target node having only a single switching matrix being operative

for switching a wavelength channel of each single wavelength (i.e.  $\lambda_j$  or  $\lambda_k$  inherent in Figure 2), each single wavelength channel being switchable by only the respective said single switching matrix (i.e. switching matrix 21 switches only  $\lambda_j$  or  $\lambda_k$ , while switching matrix 22 switches only the other of  $\lambda_j$  or  $\lambda_k$ ); applying two wavelength channels having two wavelengths that are different (i.e.  $\lambda_j$  or  $\lambda_k$  inherent in Figure 2), but modulated with the same information (i.e. “Working” and “Protection” throughout), to different respective switching matrices of the cross-connect at the start node (i.e.  $\lambda_j$  applied to matrix 21 and  $\lambda_k$  applied to matrix 22 in Figure 2); transmitting the two applied wavelength channels with the different wavelengths via the plurality of nodes (i.e. “Node D” “Node C” in Figure 1) passing through different respective switching matrices (reference numeral 21, 22 in Figure 2) of the target node; and extracting (i.e. dropping of  $\lambda_j$  or  $\lambda_k$  in Figure 2) the two transmitted wavelength channels from different respective switching matrices (reference numeral 21, 22 in Figure 2) of the cross-connect at the target node.

Regarding claim 26, Li teaches the method according to claim 25, and keeping the two wavelengths of the two wavelength channels fixed during transmission between the start node and the target node (i.e.  $\lambda_j$  and  $\lambda_k$  inherent in Figure 2).

Regarding claim 27, Li teaches the method according to claim 25, and modifying the wavelength of one of the two wavelength channels at an intermediate node between the start node and the target node (i.e. at least one of the wavelength channels if not both of the wavelength channels are attenuated by the intermediate nodes due to loss).

Regarding claim 28, Li teaches the method according to claim 25, and jointly defining the paths of the two wavelength channels by a central network controller (i.e. any of the “Client NE”) operative for choosing the two different wavelengths for transmission between a last

intermediate node and the target node (i.e. the “Client NE” of the target node control the switching matrices of the target node in order to choose the appropriate wavelengths coming from the last intermediate node).

Regarding claim 29, Li teaches the method according to claim 27, and dividing the wavelengths transmissible in the network into at least two groups (i.e. “Working” and “Protection” throughout), and selecting the wavelengths of the two wavelength channels from different ones of the groups (i.e. either  $\lambda_j$  and  $\lambda_k$  in Figure 2 depending upon the fault condition), each wavelength modification of one of the two wavelength channels at an intermediate node occurring between the wavelengths of a same group (i.e. the same wavelengths with experience the same loss by traversing the intermediate nodes).

Regarding claim 30, Li teaches the method according to claim 25, wherein the transmitting step is performed by transmitting the two applied wavelength channels with the different wavelengths via different paths (as seen in Figure 2).

#### ***Response to Arguments***

Applicant's arguments filed 07/16/09 have been fully considered but they are not persuasive. As noted in the amended office action, the examiner maintains that Li, at least in Figure 2, continues to meet the limitations of the claimed invention. Specifically, Li's Figure 2 clearly shows that a single switching matrix, i.e. either element 21 or element 22, is responsible for switching working and protection signals of the same wavelength to and from the clients.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Agustin Bello whose telephone number is (571) 272-3026. The examiner can normally be reached on M-F 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kenneth Vanderpuye can be reached on (571) 272-3078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

*Agustin Bello*

Primary Examiner  
Art Unit 2613